

Dated: May 31, 2016

Eddward P. Ballinger Jr., Bankruptcy Judge



IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF ARIZONA

In re:

FRONTIER STAR , LLC,  
  
Debtors.

Chapter 11

Case Nos. 2:15-bk-09383-EPB  
2:15-bk-09385-EPB  
2:15-bk-14679-EPB  
2:15-bk-15682-EPB

This filing applies to:

☒ ALL DEBTORS

☐ SPECIFIED DEBTOR

Jointly Administered Under  
Case No. 2:15-bk-09383-EPB

**ORDER AUTHORIZING THE  
ASSUMPTION AND ASSIGNMENT  
OF CERTAIN LEASES**

This matter came before the Court pursuant to the Chapter 11 Trustee's *Third Omnibus Motion for Authority to Assume and Assign Certain Leases of the Debtors* [Docket No. 894] ("Lease Motion") and pursuant to this Court's *Order Authorizing and Approving the Sale of Substantially All of Debtors' Assets Free and Clear of Liens, Claims, Encumbrances, and Interests and the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection Therewith, and Granting Related Relief* [Docket No. 888] ("Sale Order"). An Objection to the Lease Motion [Docket No. 931] was filed by HVTC, L.L.C. ("HVTC") and Gilbert-Chandler

1 Heights I, L.L.C. (“GCHI”; collectively with HVTC, the “Landlords”), which Objection is  
2 resolved by this Order, which has been approved by counsel for the Landlords. This  
3 Order has also been approved by counsel for Starcorp, LLC (“Buyer”), which was  
4 granted certain lease designation rights pursuant to the Sale Order.  
5

6 The Court has considered the entire record in this matter, and based on the  
7 entire record before the Court, the Court hereby finds as follows:

8 A. The findings and conclusions set forth herein (and any findings and  
9 conclusions stated by the Court at any hearing regarding the Sale Order) constitute  
10 the Court’s findings of fact and conclusions of law pursuant to Rule 7052 of the  
11 Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), made applicable to  
12 this proceeding pursuant to Bankruptcy Rule 9014.  
13

14 B. To the extent that any of the findings of fact constitute conclusions of  
15 law, they are adopted as such.

16 C. On November 18, 2015, this Court appointed P. Gregg Curry (“Trustee”)  
17 as the Chapter 11 Trustee for these bankruptcy cases and estates.  
18

19 D. Pursuant to the Sale Order and the Lease Motion, the Buyer has  
20 designated the following leases *inter alia* for assumption and assignment:

- 21 1) Happy Valley Towne Center Ground Lease dated January 12, 2004,  
22 as amended by that First Amendment to Happy Valley Towne Center  
23 Ground Lease dated on or about May 24, 2004 (collectively “HVTC  
24 Lease”); and  
25
- 26 2) Gilbert Gateway Towne Center Phase II Ground Lease dated June  
27 21, 2005, as amended by that First Amendment to Gilbert Gateway  
28 Towne Center Phase II Ground Lease dated January 12, 2006, and

1 that Second Amendment to Gilbert Gateway Towne Center Phase II  
2 Ground Lease dated August 30, 2010 (collectively "GCHI Lease").

3 E. Notice of the relief requested by the Lease Motion was duly served on  
4 creditors and interested parties, which the Court finds to be sufficient notice in the  
5 particular circumstances.  
6

7 ACCORDINGLY, IT IS HEREBY ORDERED AS FOLLOWS:

8 1. The Lease Motion is granted as provided in this Order.

9 2. The Trustee is hereby authorized to assume the HVTC Lease and the  
10 GCHI Lease (collectively "Leases") and to assign the Leases to Starcorp CJ, LLC, a  
11 Delaware limited liability company ("Lease Assignee"), which has been designated  
12 by the Buyer to be the assignee of the Leases.  
13

14 3. Within 15 days of the entry of this Order, the Trustee shall pay directly to  
15 the Landlords the following amounts as the required cure amounts and  
16 compensation for pecuniary loss pursuant to 11 U.S.C. § 365(b)(1), which represents  
17 the accrued and unpaid amounts due under the Landlords under the Leases as of  
18 March 31, 2016 ("Cure Amounts"):  
19

20 a. To HVTC, L.L.C. -- \$24,885.04; and

21 b. To Gilbert-Chandler Heights I, L.L.C. – \$23,049.72.  
22

23 4. The Debtors, their respective bankruptcy estates, and the Trustee shall  
24 be, and hereby are, relieved from liability for any breach of any of the Leases  
25 occurring on or after April 1, 2016, pursuant to 11 U.S.C. § 365(k).  
26  
27  
28

1           5.     The Buyer and Lease Assignee have provided adequate assurance of  
2 future performance for the Leases within the meaning of 11 U.S.C. §365(b)(1)(C),  
3 365(b)(3), and 365(f)(2)(B).

4           6.     The Lease Assignee shall be deemed to be substituted as the Lessee  
5 under the Leases effective as of April 1, 2016.

6           7.     The Lease Assignee shall operate Carl's Jr. restaurants on the premises  
7 that are the subject of the Leases and shall comply with the restrictions on use,  
8 radius, location, and/or exclusivity that are contained in the Leases.

9           8.     Notwithstanding anything to the contrary in this Order, with respect to  
10 each of the Leases, the Lease Assignee shall have both the benefits and the  
11 burdens under the Leases, including those burdens which have accrued as of April 1,  
12 2016, but are not yet due under the terms of the Lease (and thus are not yet payable  
13 as part of the Cure Amounts pursuant to 11 U.S.C. § 365(b)(1)(A)), including, but not  
14 limited to: (a) any adjustments or reconciliations (including any year-end adjustments  
15 or reconciliations) in respect of common area maintenance, insurance, taxes, and  
16 other charges and expenses that become due under the Leases; (b) any and all  
17 property taxes due and payable under the Leases; and (c) any indemnification  
18 obligations that become due under the Leases.

19           9.     Except to the extent otherwise set forth herein, all provisions of the Sale  
20 Order regarding the assumption and assignment of Leases shall apply as though  
21 fully set forth herein and as though the Leases were Assigned Contracts as that term  
22 is used in the Sale Order.

23           10.    Notwithstanding the stay provisions of Bankruptcy Rule 6006(d), this  
24 Order shall be effective and enforceable immediately upon its entry and its provisions  
25 shall be self-executing.  
26  
27  
28

DATED AND SIGNED ABOVE BY:  
EDDWARD P. BALLINGER JR.  
UNITED STATES BANKRUPTCY JUDGE

APPROVED:

**DICKINSON WRIGHT PLLC**

WN/4239

By: \_\_\_\_\_  
William Novotny  
*Attorneys for HVTG, L.L.C., and Gilbert-  
Chandler Heights I, L.L.C.*

**MOTSCHENBACHER & BLATTNER, LLP**

/s/NJH

By: \_\_\_\_\_  
Nicholas J. Henderson  
*Attorneys for the Buyer and Lease Assignee*

**BRYAN CAVE LLP**

/s/ALC

By: \_\_\_\_\_  
Amanda L. Cartwright  
*Attorneys for the Trustee*

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